IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.493 OF 2005

1.Smt. Kunda @ Sulochana Suresh Raul
and Anr. ..Appellants

Versus

Smt.Savitribai Babaji Chavan ..Respondent

Mr.Suresh Bhosle for appellants
Mr.P.J.Shinde for respondent

CORAM : P.V.KAKADE, J.
DATE : 1ST JULY, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Raigad dated 28.1.2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Alibag on 30.6.2001 decreeing the suit

in respect of declaration of right of way pleaded by the plaintiff.

2. I have heard the learned counsel for both the parties. Perused the record, including the copy of Sale Deed Exh.62, which is the basis for the suit.

3. The plaintiff filed the suit for declaration to the effect that he had right of way of 20-22 ft. in width and 200 ft. in length in the suit property that is the property admittedly belonging to the defendants. The plaintiff further alleged that during the pendency of the suit the defendants illegally made construction of house and Padvi on the suit way and due to that obstruction was caused in the way and the right of the plaintiff was affected. Hence the mandatory injunction was also prayed for.

. The learned trial court after hearing both the parties and adjudicating the dispute on merits came to the conclusion that indeed there was way of the plaintiff through the defendants' property and that pending the suit the defendants had constructed house and Padvi on the way due to which the way of the

plaintiff was obstructed and mandatory injunction also came to be granted. The appeal was carried to the Addl. District Judge, Raigad. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the learned trial judge were legal and proper and as such appeal came to be dismissed. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant brought to my notice a copy of document Exh.62 which is Sale Deed, which clearly stipulates the right of way given to the plaintiff through the defendants property. It was submitted that there was no clear dimension mentioned in the suit Sale Deed. However, for that purpose the plaintiff has led sufficient evidence. Moreover, the Court Commissioner was appointed, who had endorsed to the fact that such way existed of the given dimension through the defendants' property, as established by Sale Deed Exh.62. It was urged on behalf of the appellants that the appellate court has not referred to the evidence of Court Commissioner's Report. However, para 12 of the judgment of the lower appellate court clearly

shows that he has considered the said evidence and discussed it at length in order to come to the conclusion that the trial court had rightly upheld the plaintiff's plea on right of way and illegal obstruction on the said way. It was also sought to be submitted on behalf of the appellants that inspite of their application the Court Commissioner's Report was not provided at the appellate stage. It was also submitted that it was missing from the record. However, the fact remains that the document was on record of the proceeding. Both the courts below have relied upon the same. There is nothing on record to show or indicate that the record was missing at any stage of hearing of the litigation. Be as it may, the fact remains that no substantial question of law involved in this appeal and as such the appeal stands dismissed with no order as to costs.

. Consequently Civil Application No.902 of 2005 also stands dismissed with no order as to costs.